

Montana Code Annotated 2009

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75-10-707. Information gathering and access. (1) The department may undertake any investigative or other information-gathering action that it considers necessary or appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise enforcing the provisions of this part.

(2) Any authorized officer, employee, or representative of the department may require a person who has or may have information relevant to a release or threatened release of a hazardous or deleterious substance to furnish, upon request, any information or documents relating to but not limited to the following matters:

- (a) the identification, nature, and quantity of a hazardous or deleterious substance that has been or is being generated, treated, stored, or disposed of at or transported from a facility;
- (b) the nature or extent of a release or threatened release of a hazardous or deleterious substance at or from a facility;
- (c) information relating to the ability of a person to pay for or to perform a cleanup; and
- (d) any other information relevant to the department's determination of the appropriate remedial action to be taken or to the enforcement of this part.

(3) For purposes of assisting the department in acquiring information relevant to the need for, the determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any authorized officer, employee, or representative of the department is authorized to:

- (a) enter or have access at reasonable times to any facility or other place or property where:
 - (i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed of, or transported from;
 - (ii) there has been or may be a release of a hazardous or deleterious substance;
 - (iii) records or other relevant information regarding a release or threatened release is located;
 - (iv) entry is necessary to determine the need for any appropriate remedial action; or
 - (v) entry is necessary to effectuate a remedial action under this part; and
- (b) inspect and obtain samples from the facility or other place or property referred to in subsection (3)(a) or from any location where a suspected hazardous or deleterious substance may be located. Any authorized officer, employee, or representative of the department is authorized to inspect and obtain samples of containers or labeling for suspected hazardous or deleterious substances. Each inspection must be completed with reasonable promptness. If the authorized officer, employee, or representative obtains samples, before leaving the premises that person shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of the samples must be furnished promptly to the owner, operator, tenant, or other person in charge if that person can be located.

(4) The department may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents relating to the matters in subsections (2)(a) through (2)(d). The method for service of subpoenas and payment of witness fees and mileage is the same as that required in civil actions in the district courts of the state. In case of a refusal to obey a subpoena issued and served upon a person pursuant to this subsection, the district court for a district in which the person is found, resides, or transacts business, upon application of the department and after notice to the person,

has jurisdiction to issue an order requiring the person to appear and either give testimony or produce documents, or both, before a hearings officer. A failure to obey the order of the court may be punished by the court as a contempt.

(5) If consent is not granted regarding a request made by an authorized officer, employee, or representative under this section, the director of the department may issue an order directing compliance with the request.

(6) The department may commence a civil action to compel compliance with an order issued pursuant to this section.

(7) In any action commenced pursuant to subsection (6) when the court determines that there may be an imminent and substantial threat to public health, safety, or welfare or the environment, the court shall enjoin any activity that constitutes a failure to comply with the order and shall direct compliance with the order unless, under the circumstances of the case, the order is arbitrary and capricious or otherwise not in accordance with law.

(8) Persons subject to the requirements of this section may make a written claim of confidentiality for information unique to the owner or operator of a facility that would, if disclosed, reveal methods or processes entitled to protection as trade secrets. The claim of confidentiality must be clearly designated on the materials at the time they are obtained by the department. If the department accepts the characterization, it shall maintain that information as confidential. Information describing physical or chemical characteristics of hazardous or deleterious substances that have been or may be released into the environment are not considered confidential. The department has access to and may use any trade secret information in carrying out the activities of this part as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the information as confidential.

History: En. Sec. 5, Ch. 709, L. 1989; amd. Sec. 270, Ch. 42, L. 1997.

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